

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

SEARS, ROEBUCK AND CO.

Employer

and

Case No. 16-RC-10916

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION NO. 220**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. The Petition and Issue Presented

On November 24, 2009, the Petitioner filed a petition, seeking to represent all full-time and regular part-time Sears, Roebuck & Company and A&E service technicians employed by the Employer in its District 8227. The petition excluded all other employees, including office clerical employees, confidential employees, managerial employees, guards and supervisors as defined by the Act. At the time of the filing of the petition, the Employer employed about 226 employees in the petitioned-for unit.

A hearing in this case was held before a hearing officer on December 8 and 9, 2009. The hearing presented one issue - the appropriateness of the above-described bargaining unit. While the Petitioner seeks to represent only the above-described service technicians in District 8227, the Employer maintains the smallest appropriate unit should include not only the service technicians, but also 12 hourly support employees in District 8227, located in Farmers Branch,

Texas, and 54 hourly employees at the Region Routing Center in Fort Worth, Texas. The record does not reflect any collective bargaining history exists for any of the facilities in the District.

II. The Regional Director's Findings

I have considered the evidence adduced during the hearing and the arguments advanced by both parties in their post-hearing briefs. For the reasons set forth below, I find that an appropriate unit consists of all full-time and regular part-time Sears, Roebuck & Company and A&E service technicians and the 12 hourly support employees in District 8227, excluding the hourly employees at the Region Routing Center. Accordingly, I am directing an election in a unit consisting of approximately 238 employees.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will discuss the facts and the reasoning that supports my findings.

III. Overview of Employer's Operations

The Employer is a New York corporation engaged in the operation of retail stores and the repair and service of appliances throughout the United States. Sears Product Repair Services (PRS) is a national division of the Employer dedicated to the repair of appliances and the sale of parts to consumers. Sears PRS is divided into four regions, which are further divided into districts. This case concerns the Employer's operations in its Service District 8227. Service District 8227 is referred to as the Dallas-Fort Worth district, but it also includes 20 percent of Oklahoma, extends slightly west of Abilene and Wichita Falls, stretches slightly south of Waco, and includes part of Louisiana.

District 8227 is managed by the district service general manager, who is responsible for all of the service technicians assigned to this district, as well as the associates working in the

district office located at 2270 Valley View Lane in Farmers Branch, Texas. The district service general manager is accountable for the district's business performance and is responsible for the district's compliance with federal and state laws. He is responsible for all profit and loss reported by the district. Next in the hierarchy of management is the district operations manager, who oversees all the operations for the district. The district operations manager manages the 12 hourly support employees at issue in this case. The technical managers manage the service technicians and report directly to the district service general manager. The district and technical managers, as well as the twelve hourly support employees, work in the Farmers Branch district office. Meanwhile, the service technicians assigned to this district perform in-home repairs in customers' homes throughout the district.

IV. Service Technicians

Technicians are grouped into three different levels, based on the type of appliances they repair. Level one is designated for mostly lawn and garden-related repairs and repairs of most gasoline equipment. Level two is for repairs mostly on refrigeration (non-sealed systems) appliances, as well as cooking, dishwashers, and laundry. Level three is reserved for repairs on air conditioning-dehumidifiers, heat pumps, HVAC,¹ oil/boilers, refrigerators (sealed systems) and electronics. These levels vary in terms of the licensing required to repair certain appliances as well as the difficulty involved in completing the repairs. About forty percent of technicians are generalist technicians who are cross-trained to repair appliances in more than one level; in order to become generalists, they must at least have skill sets in level three.

Approximately 226 technicians are divided among nine technical managers. Those technicians who service the A&E brand are divided between two A&E technical managers. There are approximately 42 A&E technicians. The rural service technicians (i.e., those working

¹ This acronym refers to the home air conditioning, heating and ventilating system.

in rural areas of east and west Texas) are divided among two technical managers in terms of the geography of their work. Approximately 22 technicians work in East Texas and 26 technicians work in West Texas. Meanwhile, the technicians working in the Dallas metro area are divided among the remaining five technical managers in terms of their industry specialty.

All the technicians, except one,² conduct repairs at customers' homes and go directly to their first repair of the day from their own homes. They receive their daily routes by accessing a handheld computer terminal known as an SST. Their assigned repairs, or service orders, are transmitted to them repair by repair throughout the workday. On their SSTs, technicians have limited access to the NPS system, which contains the entire customer service history for all service orders. Technicians also have access to the LIS system, which is a database used to look up repair parts. In addition to their SST, technicians are issued cell phones to communicate with Employer associates about work-related issues.

Technicians normally work alone in the customers' homes and do not work with other technicians on repairs unless they specifically request the aid of another technician. They travel to their various appointments using Employer trucks which carry their repair equipment. The truck stock inventory varies depending on the technician's specialty and geographical work area. Testimony approximated the frequency of meetings held by technical managers with technicians to vary from more than once a month to once every two months. These meetings are held at the Farmers Branch district office. Technical managers may hold safety ready meetings with technicians to update them on compliance issues or other work-related information or to provide training on new systems or tools.

² One technician reports to the outlet store, where he repairs all appliances returned to the store.

Technicians are not required to have repair training or prior experience. They are only required to have a GED or high school diploma. Technicians are given training and obtain any required licensing after they are hired by the Employer.

Technicians do not visit the Farmers Branch district building or the Fort Worth routing center on a daily basis. Conflicting evidence was presented with respect to the frequency that technicians visit the district building and the routing center. For example, the Region Routing Center manager testified he observed technicians' vans parked at the Routing Center on a daily basis. However, he also acknowledged the technicians could be visiting the facility for a reason unrelated to the Routing Center because the facility is shared with the over-the-counter organization of the Employer. So, a technician could be coming to the facility to repair an appliance in the over-the-counter section of the facility. Meanwhile, two technicians testified they were instructed in a technician staff meeting to stay out of the routing department during any visits to the Routing Center. The evidence shows the Routing Center is often used by technicians as a drop-off point for used or unnecessary parts.

V. Twelve Hourly Support Employees in District 8227

The twelve support employees in District 8227 are divided into two main categories – customer relations associates and support specialists. Two customer relations associates work at the Farmers Branch facility. One of these two associates is a lead. They are responsible for answering calls at the district building. These phone calls could be from the Employer national customer care phone network, customers, technical managers, Employer retail stores, or technicians. The percentage of calls received from technicians was estimated at 50 percent. A technician may have occasion to call a customer relations associate in order to verify information that is not accessible on their SST; to address a problem with a customer; or, to contact an

Employer retail store. Customer relations associates also communicate with technical managers regularly to resolve customer concerns or complaints.

Customer relations associates have access to the same computer systems that technicians do (i.e., NPS and LIS), except that they actually have a higher level of access to historical information on NPS. This level of access allows them to assist a technician who may need more information about a previous service call completed for a particular customer.

One lead support specialist works at the Farmers Branch facility. Her primary function is controlling all the inventory on the technicians' trucks. She also answers phone calls received on one of the two main numbers for the district building. In doing so, she sometimes receives general calls from technicians. She also communicates daily by phone with technicians concerning specific questions about their truck stock, such as a defective part on their truck or a request to add or remove a part from their truck stock. She occasionally attends technical managers' meeting held with technicians.

Nine support specialists also work at the district building. Approximately, three of these specialists (referred to as back-flow specialists) are responsible for the back-room reverse flow process, which involves collecting all the unused or unnecessary tools and equipment from the technicians in order to determine if the district can get credit for those parts in its inventory. These specialists collect these unused tools and equipment from designated drop-off locations where the technicians can leave the parts. After a specialist picks up the part and brings it back to the district building, the specialist scans in the bar code to see whether the part should be kept, sent to the Employer's Parts Distribution Center, or destroyed. This function is important in ensuring that only properly functioning parts are recycled or placed back in the district's stock of technicians' equipment.

In addition to the three back-flow specialists, one support specialist primarily provides supplies to the technicians. Supplies include uniforms, papers, pens, batteries, forms, envelopes, and any other supplies (except for technical repair tools and equipment) necessary to carry out their work. Technicians submit requests for supplies in person, during staff meetings, or by leaving a message on the supply phone line. Technicians most commonly use the supply phone line to submit supply orders. This support specialist then retrieves the phone messages and processes the supply request. Occasionally, she calls the technician back to clarify what the technician requested. This support specialist is also cross-trained to perform other support duties, such as answering phones and reconciling technicians' credit card account statements.

Another support specialist is devoted to addressing safety issues in the district. She handles on-the-job injuries and damage to customers' homes or other property. She is accountable for ensuring technicians have personal protection equipment in their trucks. In addressing any on-the-job injuries or accidents involving customers' property, she contacts technicians directly to investigate and obtain information necessary to complete any required paperwork. She conducts monthly conference calls about safety issues. Managers, the lead specialist, and several support specialists normally participate in these conference calls. If technicians have a particular safety issue that is pertinent to the call, then those technicians would be invited to participate, as well. She is also cross-trained to take care of licensing or toll tags for technicians.

One support specialist is dedicated to handling fleet issues. Specifically, he is responsible for licensing, maintaining fuel cards, toll tags, and any repairs to the fleet. He uses a computer system, called the GE Fleet Service, in order to track fleet mileage, previous repairs to the fleet, and costs of repairs to the fleet. He often uses this system to estimate the cost of

needed repairs and locate the most reasonable source for repairs. In order to take care of any of these maintenance issues, he communicates with technicians through an SST message or by phone.

Another support specialist is principally responsible for handling and tracking the freon used for repairs in the district. Freon is used by the refrigeration and HVAC technicians. Because certification is required in order to handle freon, this specialist maintains a log of the freon he dispenses to technicians. Freon is maintained in a locked area at the district office. When a technician needs a tank of freon, he comes to the district office where this specialist unlocks the protected area and dispenses the necessary tanks of Freon. The technician must also sign the log. Over 100 technicians in the district use Freon for their repairs. Technicians normally communicate by phone or SST message to notify this specialist if they need Freon. This specialist is also cross-trained to handle calibrated specialty tools for the technicians.

A support specialist is responsible for the technicians' blue envelopes in which the technicians maintain the receipts for all the repairs completed each week. She must track all the receipts and reconcile any discrepancies by following up with the technicians. She also tracks the expiration dates for specialty tools that require recalibration. She uses a database that alerts her when a tool's calibration is about to expire. She will contact the technician and make arrangements to switch the tool in need of recalibration with one that is already calibrated. If a large group of tools, such as refrigeration or HVAC tools, is set to expire, she attends a staff meeting where she can switch these tools out with several technicians at once. By ensuring the tools are properly calibrated, the technicians are more likely to diagnose a repair job correctly. This specialist is also responsible for the Employer-issued cell phones in the district.

Technicians report any cell phone problems to the specialist, who then either replaces the phone or changes the phone number associated with the phone.

A different specialist is responsible for technicians' orange envelopes, in which technicians store all receipts for gas or parts purchased locally. She matches the receipts with the technicians' Mastercard statements and verifies what was purchased, the reason it was purchased, and the service order associated with the purchase. This specialist also is cross-trained to track blue envelopes as well.

All support specialists are cross-trained in order to conduct inventories on the technicians' trucks throughout the year. The support specialists must inventory at least 50 percent of the company fleet of trucks each year. This requires the technician to bring in his truck to the district building so that support specialists can count every part that is on the truck. The number of support specialists involved in any one truck inventory varies depending on availability and on other truck inventories that may be conducted simultaneously. Inventory on a particular truck varies, depending on the condition of the truck and whether the truck belongs to a specialist or a generalist. An inventory will take between four hours and one day, during which time the support specialist and technician interact. Because only 50% of the fleet is inventoried each year, it may take almost two years before a technician brings his truck in again for inventory. The truck stock inventory function helps ensure technicians have the right parts available to complete repairs on the first trip out to the customer's home. In fact, one of the metrics by which technicians' job performance is measured is the number of trips made to a customer's home per repair.

The district service general manager attends the support meetings that the district operations manager holds with these hourly support employees so that he remains informed

about the status of inventories during the year. Support specialists will attend technical managers' team meetings with the technicians if there is an issue pertinent to them that will be addressed. A support specialist may need to communicate with a group of technicians at one of these meetings in order to address an issue related to the specialist's job function.

The parties stipulated that the two leads from the district (the lead customer relations specialist and the lead support specialist) are not supervisors within the meaning of Section 2(11) of the Act because they do not possess one or more of the following authorities -- hiring, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, utilizing independent judgment in exercising such authority -- and, therefore, should be excluded from the bargaining unit

VI. Hourly Associates at the Region Routing Center

The Employer contends the smallest appropriate unit should include about 54 hourly associates at the Region Routing Center located at 501 North Beach Street, in Fort Worth, Texas. The Routing Center is located about 22 miles from the Farmers Branch district building. The Routing Center is responsible for building the daily routes of the technicians in the South Region. The Routing Center not only services the technicians in District 8227, but also services five other districts in four other states. About 15 to 20 percent of the Routing Center services District 8227. The hourly associates at the Routing Center that the Employer is asserting should be included in the unit are: the routing team leader, the route specialists, the service order clericals, and the regional support specialists. The Routing Center is directed by the Routing Center manager.

The Routing Center manager is responsible for the overall operation of the Center. His work performance is based on the performance of the six districts the Routing Center services. Under the Routing Center manager, two route managers are each assigned to three districts. The route manager over District 8227 also manages Districts 8151 and 8256. The route manager is responsible for the overall route creation of the route specialists. There are a total of forty routing specialists and four routing team leaders. Each route manager manages two team leaders, as well as the twenty route specialists who work under these two team leaders.

After a service order is created and assigned to a particular technician by the NPS system, the routing specialist will transmit the assignment to the technician shortly before the time scheduled for that repair. That is, the routing specialists pass on these routing assignments one at a time. Also, if a technician requires the assistance of another technician, he can contact a routing specialist who will then dispatch a technician in the area. Technicians will contact the Routing Center at the end of the day to confirm there are no further service orders to complete. Technicians deal with different routing specialists daily by telephone, and there are no specific specialists with whom they are assigned to interact with each day. The routing specialists will call a technical manager when the specialist has been unable to communicate with a technician for an extended period of time. If a technician is sick, the technician can either call the Routing Center to inform them he cannot come in, or he simply pushes a button on his SST, which automatically removes that day's service orders from his SST. When a technician is sick, routing specialists either reassign or reschedule the service orders.

In addition to assigning the technicians' daily routes, the routing specialists monitor the technicians' service orders in order to determine whether any adjustments must be made to the schedule throughout the workday. Like the technicians and the district support employees, the

routing specialists have access to the NPS system to obtain information about service orders. Routing specialists also have access to another application called Gantt, which is a service power routing engine. Routing specialists may use Gantt to enter information about technicians in order to resolve scheduling problems with technicians' routes. For instance, if a technician finds that a repair is taking longer than expected to complete a repair and may be running late to his next service order, he can contact the routing specialist. He may telephone the routing specialist, or he can simply indicate on his SST that the duration of his current service order will increase. The routing specialist can then enter information about the next service order into Gantt in order to determine which other technician could take that service order.

Nine of the 40 routing specialists are normally responsible for routing District 8227. However, when route specialists are out of the office or when there are peak service periods for particular districts, routing specialists will cross over and schedule routing for other districts to which they are not normally assigned. Any of these nine specialists could be shifted to service another district on any particular day, and any specialist who normally services a different district can be shifted into the area servicing District 8227. The frequency of these shifts varies from daily to weekly.

A separate position in the Routing Center is the region support specialist (RSS). The RSS is responsible for following up with technicians to ensure they timely submit the money collected while completing repairs. The RSS also helps in processing paperwork for warranty repairs. Vendors, such as Whirlpool, Amana, Fisher & Paykel, or Sony, will not pay the Employer for a warranty repair if the correct model number or serial number for the appliance is missing from the paperwork, so the RSS will contact the technician or technical manager to verify this information and help secure payment for the warranty work. The RSS provides these

services for all the technicians in the six districts. The RSS will communicate daily with technicians through SST messages or by phone. Within this RSS department is a team lead. Including the team lead, there are six employees in this department.

Another position in the Routing Center is called the service order clerical (SOC). When a technician completes their assigned service calls each day, they upload the service call information onto the NPS database via their SSTs. Some of this information is then transmitted to a route discrepancy screen. The SOC reviews the route discrepancy screen and resolves any missing information in the service orders shown on this screen in order to properly close out the service order. In order to do this, the SOC communicates with the technicians by phone or SST to obtain any missing information and resolve the discrepancy. There are four SOC employees at the Routing Center.

The district service general manager does not have any oversight over the Routing Center. Meetings between the district and the Routing Center normally consist of technical managers, the district service general manager, and members of the routing team. They usually do not include district technicians.

While the parties did not stipulate that the leads in the Routing Center are not Section 2(11) supervisors, a routing team lead testified she is not involving in decisions to hire, transfer, suspend, lay-off, recall, promote, or award employees. The routing team lead assigns daily tasks to the routing specialists. The lead does not use independent judgment in deciding to assign specialists to particular districts; the decision is simply based on the availability of routing specialists and the workload among the districts. The team lead is not subject to different grading metrics based on the performance of the routing specialists. Rather, the lead is graded based on the same metrics as the routing specialists.

VII. Interrelation Between Employees

The district service general manager oversees all of the hiring, firing, written discipline and performance reviews of all the technical managers, technicians, and support employees within the district. Technicians and support employees in the district are given midyear and annual performance reviews. The district service general manager signs off on each of these reviews. Performance reviews for both technicians and district support employees will determine whether they will receive a wage increase.

Hourly employees at the Routing Center are managed by the Region Routing Center manager in a different facility about thirty miles away from the district building. Both the Region Routing Center manager and the district service general manager report directly to the Regional Vice President; these two managers are not accountable to each other. Similar to the district service general manager, the Routing Center manager is responsible for the hiring, firing and discipline of Routing Center employees. Routing Center employees are subject to the same human resources policies as district technicians and support employees. However, the same policies apply to all employees nationwide.

If there is a performance issue with a Routing Center employee, the district service general manager may convey his concerns to the route manager or the Region Routing Center manager, who then investigates the situation. The ultimate decision of how to address the Routing Center employee issue, however, will rest with the Region Routing Center manager and his staff.

The District employees (technicians and support employees) and the Fort Worth Routing Center share a common Area Human Resources Manager. This manager oversees recruiting, employee orientation, performance evaluation decisions, salary administration, and other

personnel matters for both facilities. However, this manager also has the same human resources responsibilities for two other business centers, including the Baton Rouge District and the Nashville District. The Farmers Branch facility and Region Routing Center each have their own front-line Human Resources representatives.

Some transfers between the technician positions and the two basic types of support positions at issue in this hearing have occurred. Two technicians mentioned in the record transferred from technician to router positions at the Regional Routing Center. One of these transfers occurred about five to six years ago, while the other was six to seven years ago. Another employee transferred from a technician position to a district support position and then back to a technician. There was testimony about another employee who went from a support specialist position to a process analyst position at the Routing Center about two to three years ago; the process analyst position, however, is not among the hourly associates at the Routing Center that the Employer contends should be included in the unit. These transfers all occurred through a formal application process for open, posted positions. These individuals were not simply shifted instantly between these positions. They applied for their new positions through the typical application process. The turnover for service technicians annually is about 18 percent. In the past few years, the majority of the vacated service technician positions have been filled by candidates outside the Sears organization or by internal transfers from other districts.

A technician who was recently on light duty was sent for one day to the Routing Center to get a better understanding of the new routing system recently implemented. This testimony, however, indicated this was more for observational purposes than to provide back-up support for the Routing Center. About six to eight technicians on light duty in the last 12 months have been

sent to the Farmers Branch facility, where they have helped in the customer service area or with the back-flow specialists.

All employees are subject to the discipline policy known as the plan for improvement process. Substandard work performance can lead to placement on such a plan. All measured using the same leadership principles, which account for 40 percent of their performance reviews. The remaining 60 percent applies business metrics. All technicians are evaluated by the same business metrics. However, the business metrics by which district employees and region routing employees are measured differ. For instance, Routing Center employees are measured based on phone answer time, message response time, district cycle time, and calls handled per day. Technicians, on the other hand, are measured based on repair completes per day and trips per repair, among other things.

Technicians, district support employees, and Routing Center employees have access to the NPS and LIS systems. Routing Center employees have access to another computer application, Gantt, which they use for routing.

No prior experience or training is required for the technician, district support, or hourly routing positions. There is a common application for these positions, as well as all other jobs in home services. These positions are also all subject to background checks.

Technicians, district support employees, and Routing Center employees receive the same benefits. The only difference is that the technicians currently have a pilot program under which they can receive medical benefits and one week of vacation earlier than other employees. Technicians are the only employees concerned in this hearing who are required to wear uniforms. All three groups of employees are paid biweekly. Wages for technicians range from about \$14.00 per hour to \$26.90. District support employees' wages (including lead support

specialists) range from about \$8.70 to \$20.20 per hour. Wages for SOC employees in the Routing Center start at about \$9 to \$10 per hour. Starting pay for routing specialists is about \$12.70 per hour. RSS employee wages begin at about \$9 to \$10 per hour. The record does not reflect the end of the pay range for routing specialists, RSS, or SOC employees.

VIII. Analysis

Under Section 9(b) of the Act, the Board has broad discretion to determine “the unit appropriate for the purposes of collective bargaining” in each case “in order to assure employees the fullest freedom in exercising the rights guaranteed by the Act.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494-497 (1985). The Board has the discretion to select an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit. *American Hospital Association v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Petitioner contends that a unit consisting of only the service technicians in District 8227 is an appropriate unit. The Employer asserts that a unit consisting of the service technicians must also include the twelve hourly support employees in District 8227 and the hourly employees at the Region Routing Center. The scope of the unit sought by the petitioner is relevant but cannot be determinative of the unit. *Metropolitan Life Insurance Co.*, 156 NLRB 1408, 1418 (1966); *Airco, Inc.*, 273 NLRB 348 (1984).

In determining what constitutes an appropriate unit, the key question is whether the employees share a sufficient community of interest. *Alois Box Co., Inc.*, 326 NLRB 1177 (1998); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). In making this determination, the Board weighs a variety of factors, including (1) integration of operations, (2) centralization of managerial and administrative control, (3) geographic proximity, (4) similarity of working

conditions, skill, and functions, (5) common control over labor relations, (6) collective bargaining history, and (7) interchangeability of employees. *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163 (3d Cir. 1986); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). No one of the above factors has controlling weight and there are no *per se* rules to include or exclude any classification of employees in any unit. *Airco, Inc.*, *supra* at 348.

Based on the foregoing and the entire record, I find the service technicians share such a significant community of interest with the twelve hourly support employees in District 8227 that they must be included in the unit with the service technicians. I find there are such significant differences between the technicians and the hourly employees at the Region Routing Center that the hourly employees at the Region Routing Center should be excluded from the unit.

The record establishes that the primary job activities of the customer relations specialists and the support specialists in the district building directly support the job activities of the technicians. For example, the customer relations specialists regularly communicate with technicians to address problems with customers and research information not available on technicians' SSTs. Support specialists maintain technicians' truck stock inventories, supply necessary equipment to technicians, replace tools in need of calibration, process unused part returned by technicians, and audit payments submitted by technicians. Their jobs require daily contact by phone, SST messages, or in person. These jobs are not only functionally integrated, but the administrative structure of District 8227 further demonstrates the integration of their operations.

Technicians and the support employees at the Farmers Branch facility share common supervision and terms and conditions of employment. The technicians and the twelve hourly support employees all work under the centralized administration of District 8227. While they

have different direct supervisors, they all ultimately report to the district service general manager, who only manages District 8227. This manager oversees all of their hiring, firing, performance reviews, and discipline. They are all subject to the same employee policies and share the same front-line human resources representatives and Area Human Resources Manager. Their wages are comparable, and they receive the same benefits. The only difference in terms of benefits is that recent technician hires in the pilot program may receive some of these benefits earlier.

There are some differences in their terms and conditions of employment. Technicians possess different job skills and receive different training. However, technicians themselves vary in their skills set and training, based on the type of appliances they repair. Technicians mostly work in customers' homes, while district support employees work at the Farmers Branch facility. Technicians visit the Farmers Branch facility to attend meetings, obtain or return parts, have their truck inventoried, or speak with district associates about other job-related matters.

Because of the similarity in working conditions, centralized supervision, and functional integration between the service technicians and district support employees, I find that the district support employees should be included in the petitioned-for unit of only District 8227 service technicians.

A petitioned-for-single-facility unit is presumptively appropriate, and the burden is on the party opposing that unit to present evidence overcoming the presumption. *J & L Plate*, 310 NLRB 429 (1993). To overcome the single-facility presumption, the evidence must establish that multiple facilities have so effectively merged, or that the facilities are so functionally integrated, as to have lost their separate identities. *New Britain Transportation Co.*, 330 NLRB 397 (1999). Here, the administrative structure and operations of the Farmers Branch facility and

the Fort Worth Routing Center demonstrate the two facilities are not effectively merged and maintain distinct identities. The Employer, thus, has failed to rebut this single-facility presumption.

The hourly employees at the Region Routing Center do not have common supervision with the technicians or district support employees. They are managed by a different manager who is responsible for servicing five other districts stretching across four states. In fact, as a regional staff person, who supports the entire region, he is also accountable for a total of fourteen districts in the region – not just the six districts the Routing Center services. These employees work in a different building located in another city from the district building. Also, while the technicians, district support employees, and routing center employees share the same Area Human Resources Manager, this manager is not focused on only these three groups. In fact, the Area Human Resources Manager is responsible for two other business centers entirely outside District 8227.

Unlike the technicians and district support employees, the routing center employees have responsibilities that are not focused on District 8227. In fact, even the routing specialists normally assigned to service District 8227 may be switched on a moment's notice to service a different district. There is a constant cross-over between the routing specialists assigned to the six districts at the Routing Center. Consequently, there is no consistency in the number of Routing Center employees focused on supporting the job functions of District 8227 technicians. Furthermore, the RSS and SOC employees serve all six districts associated with the Region Routing Center. The work they perform for District 8227 is only a fraction of their entire workload.

The Employer contends that face-to-face interaction with the Region Routing Center is unique to District 8227 and is not done with any of the other five districts. However, as the Region Routing Center manager, testified this is because of the Fort Worth facility's physical proximity to District 8227. There are just as many conference calls with the management teams of the other districts. The record does not demonstrate significant contacts or interchange with the service technicians or the support employees. As a result, these facts differentiate this matter from *Trane*, 339 NLRB 866 (2003). In *Trane*, the Board noted that the multi-location facility was warranted because the record reflects significant evidence of regular interchange. *Id.* at 868. Such interchange is missing from the facts at hand. Also see *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004) (significant history of interchange).

Although there is some degree of interdependency of work responsibilities between the Routing Center employees, technicians, and district support employees, the lack of common supervision, lack of physical proximity and the fact that the Routing Center services multiple districts, the record evidence leads me to conclude that the Routing Center employees do not share a sufficient community of interest warranting inclusion in the bargaining unit of service technicians and district support employees. See, e.g., *Executive Resources Associates*, 301 NLRB 400, 402 (1991).

As a result of the above analysis, the technicians and district support employees are included in the bargaining unit. The Routing Center employees do not share a community of interest and are therefore excluded from the bargaining unit.

IX. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulate, and I find, that the Employer is a New York corporation with a branch located at 2270 Valley View Lane in Farmers Branch, Texas, engaged in retail sales of consumer products and service of home appliances. Over the course of the last twelve months, which is representative of its operations, the Employer's gross revenues exceeded \$500,000 and it had purchases of materials or services directly from outside the State of Texas in excess of \$50,000.
3. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time Sears, Roebuck & Company and A&E service technicians and all support specialists and customer relations specialists employed by the Employer in its District 8227.

EXCLUDED: All other employees, including Region Routing Center employees, professionals, guards and supervisors as defined in the National Labor Relations Act.

5. The unit which I find to be appropriate here is broader than the unit sought by the Petitioner. At the hearing, the Petitioner stated its desire to proceed to an election in the broader unit if it were found to be appropriate.

X. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of

Electrical Workers, Local No. 220. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **December 29, 2009**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³ by mail, or by facsimile transmission at 817-978-2928. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting

³ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

XI. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 5, 2009**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁴ but may not be filed by facsimile.

DATED at Fort Worth, Texas this 22nd day of December, 2009.

/s/ Martha Kinard

**Martha Kinard, Regional Director
National Labor Relations Board
Region 16
Rm. 8A24 Federal Office Bldg.
819 Taylor Street
Ft. Worth, Texas 76102-6178**

⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.